

IN THE SUPREME COURT OF MISSISSIPPI

NO. 89-R -99026 SCT

**IN RE: AUTHORIZATION OF COURT ANNEXED MEDIATION IN
CHANCERY, CIRCUIT AND COUNTY COURTS**

ORDER

This matter has come before the Court, en banc, on Petition of The Mississippi Bar for Amendment of Order Authorizing Pilot Mediation Program, which proposes that a new program be instituted replacing the existing pilot program. The Court having considered the petition finds that it should be granted, with certain adjustments, and that the adoption of a program for Court Annexed Mediation as set out herein will promote the fair and efficient administration of justice within this state.

IT IS THEREFORE ORDERED that the existing pilot program, adopted by order of Court entered June 20, 1996 and thereafter amended and extended, shall expire by its terms on December 31, 1998.

IT IS FURTHER ORDERED that the Court does adopt and promulgate the plan for Court Annexed Mediation set forth in Exhibit "A" hereto, entitled Court Annexed Mediation Rules for Civil Litigation.

IT IS FURTHER ORDERED that, unless further extended by Order of this Court, such plan and the Rules hereby adopted shall expire by their terms on December 31, 2000.

IT IS FURTHER ORDERED that the Clerk of this Court shall spread this Order upon the minutes of the Court and shall forward a true certified copy hereof to West Publishing Company for publication as promptly as reasonably possible in the advance sheets of the Southern Reporter, Second Series and in the *Mississippi Rules of Court*.

SO ORDERED, this, the _____ day of October, 1998.

WILLIAM L. WALLER, JR., JUSTICE,
FOR THE COURT

MCRAE, J. WOULD DENY THE PETITION

EXHIBIT "A"

COURT ANNEXED MEDIATION RULES
FOR CIVIL LITIGATION

These rules shall govern the referral of cases by the Circuit, Chancery and County courts of this state to mediation.

I. POLICY

It shall be the policy of the courts of the State of Mississippi (1) to encourage the peaceable resolution of disputes and early settlement of pending litigation by voluntary action of the parties, and (2) to identify cases appropriate for referral to mediation pursuant to the guidelines set out in these rules.

II. CASES APPROPRIATE FOR REFERRAL TO MEDIATION

All Civil cases shall be considered appropriate for referral to mediation in the discretion of the court, giving consideration to such facts as the subject matter of the case, the amount in controversy, the complexity of the case, the number of parties, the interest of the parties in pursuing mediation, the availability of mediation, and the likelihood of settlement by mediation.

III. REFERRAL OF CIVIL CASES

Civil Cases may be referred to mediation in the following manner:

A. Any circuit, chancery and county court in this state may, either on its own motion or on the motion of any party, determine that a case is appropriate for mediation. A court may not order a case to mediation more than one time.

B. If the court on its own motion determines that a pending dispute is appropriate for referral to mediation, the court shall enter its order which shall direct the clerk or court administrator to notify the parties to complete a mediation as set forth in this rule within a time period as the court may

specify. Any party, within 10 days of the date of entry of the court's order, may file written objection to the referral order and request a hearing by the court.

C. Any party may apply to the courts of this state for referral of a case to mediation by motion upon giving notice to all other parties. A hearing may be conducted on the motion at which the court shall make a determination as to whether mediation is appropriate and if the case is referred shall enter its appropriate order.

D. Upon the court entering its final order referring a case to mediation all objections having been heard by the court, the parties shall have a period of 20 days from the date of entry of the court's final order to schedule the mediation. If the parties are unable to agree on a convenient date and mediator, the clerk or administrator of the court shall assign a date, time, location and mediator to conduct the mediation procedure, which assignment will be binding on the parties upon their being notified by the clerk or court administrator of the court. Any objections any party may have with regard to the date, time or location assigned for the mediation or the selection of the mediator shall be filed with the court in writing within 10 days of entry of the notice of the clerk or court administrator.

IV. AUTHORITY TO SETTLE

The attorneys for all parties must appear at the mediation unless otherwise ordered by the court. Each party including a person with authority to settle the case on the party's behalf shall be present during the mediation unless otherwise ordered by the court.

V. MEDIATION

A. Mediation is a forum in which an impartial person, the mediator, facilitates communications between parties to promote reconciliation, settlement or understanding among them.

B. A mediator may not impose his or her own judgment on the issues for that of the parties.

VI. SANCTIONS

If a party or a party's attorney fails to obey an order made pursuant to this rule, fails to appear at the scheduled mediation, or fails to participate, the other party shall report such circumstances to the court. The court may make such orders with regard thereto as are just within the discretion of the court, including requiring the party, or the attorney representing the party, or both, to pay the reasonable expenses incurred because of any noncompliance with this rule, including attorney's and mediator's fees; provided; however, the mediator shall not be called as a witness or otherwise be required to give evidence at a sanctions hearing.

VII. CONFIDENTIALITY OF COMMUNICATIONS

IN MEDIATION

A. Except as provided by subsections C and D below, a communication relating to the subject matter of any civil dispute made by a participant in a mediation is confidential, is not subject to disclosure, and may not be used as evidence against the participant in any judicial or administrative proceeding.

B. Mediation is confidential and no record shall be made. The participants or the mediator may not be required to testify in any proceedings relating to matters occurring during the mediation session, nor shall they be subject to process requiring disclosure of confidential information or data relating to or arising out of the matter in dispute.

C. Any oral communication or written material used in or made a part of a mediation is admissible or discoverable only if it is admissible or discoverable independent of the mediation.

D. If this section conflicts with other legal requirements for disclosure of communications or materials, the issue of confidentiality may be presented to the court having jurisdiction of the proceedings to determine, in camera, whether the facts, circumstances and context of the communications or materials sought to be disclosed warrant a protective order of the court or whether the communications or materials are subject to disclosure.

VIII. EFFECT OF WRITTEN SETTLEMENT AGREEMENT

A. If the parties reach a settlement and execute a written agreement disposing of the dispute or any part thereof; the agreement is enforceable in the same manner as any other written contract.

B. The court in its discretion may incorporate the terms of the agreement in the court's final order disposing of the case.

IX. COST OF MEDIATION

The fees and expenses of the mediation shall be established by agreement between the mediator and the parties charged with those fees and expenses. Unless otherwise agreed to by the parties or ordered by the court, the party seeking mediation shall pay the fees and expenses of the mediation. When mediation is ordered by the court on its own motion, the court shall allocate the fees and expenses of the mediation, or such fees and expenses may be taxed as costs of the litigation. The attorney's fees of the parties shall not be included in the fees and expenses of mediation.

X. ADMINISTRATIVE FUNCTIONS CONCERNING MEDIATION

The following procedures will be utilized for the conduct of administrative functions necessary to make mediators available as needed for the referral of cases.

A. The Mississippi Supreme Court assisted by the Mississippi Bar will establish qualifications for inclusion on a list of mediators and prepare such list. The list shall be distributed to all circuit, county and chancery court clerks. The Mississippi Bar staff will provide administrative assistance. An administration fee for inclusion on the list may be established and charged to the approved mediators. Courts and parties are encouraged, but not required, to select mediators from this list.

B. Administration will be conducted through a committee designated the Court Annexed Mediation Committee which will be composed of seven members appointed by the Supreme Court, three of whom shall be nominated by the Mississippi Bar. The members will serve one year terms, expiring on December 31 of each year.

C. The Court Annexed Mediation Committee, with the advice of the Supreme Court, shall determine,

on at least a semi-annual basis, whether there is an adequate number of qualified mediators to meet the demands of this Plan. If there is a determination that there is a need for training of additional mediators, The Mississippi Bar shall train or provide training to persons to serve as mediators. Persons receiving training elsewhere may qualify for inclusion on the list if said training meets the qualifications established by the Mississippi Supreme Court.

D. Within 60 days following the adoption of this plan, the Mississippi Bar shall submit to the Supreme Court proposed qualifications for mediators and administrative procedures for the implementation of the plan. Within 60 days following the appointment of members to the Annexed Mediation Committee, the committee will report to the Supreme Court the names, addresses and qualifications of mediators, and will update the list from time to time as needed.

XI. EFFECTIVE DATE OF PLAN

This mediation plan shall become effective upon adoption by the Supreme Court of the qualifications for mediators and administrative procedures identified in Part X above.

XII. TERMINATION OF EXISTING PILOT MEDIATION PROGRAM

The pilot mediation program adopted by the Supreme Court on June 20, 1996 by order dated June 12, 1996 will terminate on its existing expiration date or upon the effective date of the plan herein adopted, which ever is the earlier.

XIII. SUSPENSION AND TERMINATION OF THE PLAN

Unless extended by order of the Supreme Court, this plan will expire on December 31, 2000. The plan may be suspended or terminated by the Supreme Court upon a determination by the Court that there is an inadequate number of qualified mediators available to meet the demand without undue delay in the disposition of cases, or for such other reason as the Court may deem appropriate.